IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,) Filed February 26, 1985

vs.)

SOLOMON MILLBROOKS,) 4-511
83-1610

Defendnat-Appellant.)

Appeal from the Iowa District Court for Black Hawk County - R. J. Curnan, Judge.

Defendant appeals from his conviction of delivery of a controlled substance in violation of Iowa Code section 204.401(a). AFFIRMED.

Charles Harrington, Appellate Defender, and Deborah Goins, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mickey W. Greene, Assistant Attorney General, for plaintiff-appellee.

Heard by Schlegel, P.J., Hayden, and Sackett, JJ.

Defendant appeals from his conviction of delivery of a controlled substance in violation of Iowa Code section 204.401(a). He asserts that: (1) the trial court erred in admitting the controlled substance into evidence without a proper chain of custody; and (2) the failure of the State to make available an evidence technician as requested by defendant pursuant to Iowa Code section 691.2 deprived defendant of his right of confrontation.

Our review of criminal cases is ordinarily on assigned error. However, we make an independent evaluation of the totality of the circumstances on issues involving the violation of basic constitutional safeguards. State v. Cuevas, 322 N.W.2d 910, 911 (Iowa Ct. App. 1982).

I. Chain of Custody. In order for physical evidence to be admissible, a sufficient chain of custody must be established to show that the article has not been altered between the time it was obtained and the time it is introduced at trial. State v. Lamp, 322 N.W.2d 48, 57 (Iowa 1982). This is particularly important with items susceptible to tampering such as drugs. State v. Gibb, 303 N.W.2d 673, 681 (Iowa 1981). The required showing is that it be "reasonably probable tampering, substitution or alteration did not occur." Id. Determination of the sufficiency of the foundational requirement is within the sound discretion of the trial court; reversal is warranted only when there has been a clear abuse of that discretion. Id.

Defendant's first challenge to the chain of custody of the cocaine admitted at trial concerns the failure of a laboratory technican at the Iowa State Criminalistics Laboratory to testify. The police officer who bought the substance from defendant testified concerning its custody until it was mailed to the criminalistics laboratory. The chemist who analyzed the drug testified that he took it from the evidence room at the laboratory. He also testified that standard procedure of the laboratory regarding the handling of evidence was followed in

this case. Defendant contends that the lack of testimony from the technician who received the evidence in the mail, inventoried it, and stored it in the evidence room constitutes a fatal break in the chain of custody.

We reject this contention. In both State v. Langlet, 283 N.W.2d 330, 336-37 (Iowa 1979), and State v. Kantaris, 280 N.W.2d 389, 392 (Iowa 1979), the supreme court held that the testimony of an evidence clerk was not essential to establishing a chain of custody. The court noted that there is a presumption that a state employee would not tamper with evidence. Langlet, 283 N.W.2d at 337; Kantaris, 280 N.W.2d at 392. We find the present case to be indistinguishable from the two cited above on this issue.

Defendant also challenges the chain of custody of the cocaine because of a discrepancy between the testimony of the police officer that he mailed the substance to the criminalistics laboratory from Waterloo and the Davenport postmark on the envelope in which the substance was mailed. In State v. Lamp, 322 N.W.2d at 58-59, the supreme court held that there was a sufficient showing of chain of custody of blood samples despite several inconsistencies in the record. The court observed, "When the trial court has determined that the chain of cusody shown is sufficient, contrary evidence affects only the weight of the evidence, not its admissibility." Id. at 59. We have examined the entire record in this case, including the exhibits, and we conclude that the inconsistency concerning the place of mailing does not negate the State's showing of a reasonable probability that the evidence was not altered. Except for the postmark, the envelope as well as the heat-sealed bag, the evidence tag, and the postal receipt were exactly as they should have been. It is understandable that the police officer may have been mistaken about the place of mailing, especially since his office is in Davenport but he was on special assignment in Waterloo.

II. Confrontation. Defendant filed a pretrial notice of demand for the appearance of laboratory personnel pursuant to Iowa Code section 691.2. One of

the requested laboratory technicians was not made available by the State to testify concerning her handling of the evidence. Defendant argues that he was denied his right of confrontation. However, defendant did not raise the issue before the trial court, and, therefore, we will not consider it for the first time on appeal.

AFFIRMED.